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November 12, 2009

Ms. Tracy Egoscue
Executive Officer
RWQCB—Los Angeles
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Waste Discharge Requirements (WDR's) for Proposed Maintenance Clearing of Engineered Earth-bottom Flood Control Channels Project (99-011 2009 Renewal).

Dear Ms. Egoscue:

On behalf of Heal the Bay, we submit the following comments on the Tentative WDR for the proposed maintenance clearing of engineered earth-bottom flood control channels project, various watersheds within Los Angeles County. In general, we support this discharge being permitted under waste discharge requirements instead of a 401 Water Quality Certification. The proposed discharge covering over 100 reaches in LA County will be extremely impactful on water quality and habitat if not regulated appropriately. Thus, a permit with additional regulatory flexibility such as that provided under waste discharge requirements is appropriate. Further, the 401 Certification that was issued "de facto" due to an oversight by your agency is completely insufficient for this discharge as discussed in our comment letter dated August 5, 2009. However, we have a number of comments and concerns with the WDR as drafted. In particular, we are very concerned with the lack of compensatory mitigation for reaches that have been included in past permits. Also, we are concerned by the minimal water quality and habitat monitoring, and reporting requirements in the proposed WDRs. These issues and others are discussed in detail below. We appreciate the opportunity to provide these comments.

General Comments

Compensatory Mitigation

The WDR states that "If ongoing maintenance activities were covered by previous certifications, additional mitigation will not be required" (page 28, point 25). This provision is completely inappropriate, as each maintenance year results in new impacts that would not have been foreseen over a decade ago. It is unconceivable that a one-time compensatory mitigation of 62.7 acres could truly mitigate over a decade of clearing and dredging and upcoming disturbance permitted with the proposed WDR. New reaches were added to the maintenance program and other reaches were paved over subsequent to 1999. Additional mitigation requirements should be included in the WDR to account for disturbance within this

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upcoming permit cycle. Further, the WDR and supporting documents do not discuss the Big Tujunga Wash Mitigation Bank. The Big Tujunga Wash Mitigation Bank Site supposedly concluded April 1, 2005, yet there is no final report included in the WDR. Did the mitigation "take"? Is this now a successful habitat? Have criteria been established to determine the Bank's success in perpetuity?

Specifically, Heal the Bay recommends that the entire mitigation (from all reaches maintained by the County under this WDR) program shall:

- Be based on annual impacts for the entire life of the permit;
- Be mitigated as close to the impacted reach as possible, with a minimum criteria being that mitigation take place in the same watershed. Examples of needed mitigation projects are removal of armoring in the Malibu Creek watershed, invasive species removal in numerous watersheds, and restoration of the soft bottomed segment of Compton Creek;
- Determine a mitigation ratio based on the quality of habitat disturbed. A disturbed, high quality habitat should receive a higher mitigation ration than impacts to already highly disturbed habitat;
- Involve the various watershed councils, workgroups, or stakeholders in the implementation of habitat mitigation.

There should be no exceptions to this program. Habitat destruction caused by channel maintenance activities must be mitigated on a year to year basis over the life of the permit. Reaches like Compton Creek, Las Virgenes Creek and the soft-bottomed section of the Los Angeles River suffer significant habitat losses on an annual basis and these are not mitigated under the proposed WDR.

Monitoring

The WDR requires a very limited, one-time monitoring program to be implemented as part of the Feasibility Study. The required monitoring is to take place before, after, and during maintenance clearing for each reach impacted. There are a number of issues with this approach, namely:

- A one-time grab sample for each reach over the next five or more years is not statistically significant to make any determination about the impacts from the maintenance activity at specific reaches, other than indicating what is happening at that moment. Heal the Bay recommends that sampling take place every year the LACDPW conducts maintenance activities within any of the reaches.
- There is no wet weather sampling event. An additional wet weather sample needs to be added to the monitoring program, which would mean that four (4) samples must be collected from each site. Most of the water quality impacts from the LACDPW maintenance activity to receiving waterbodies are likely to occur during the first rain event.

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- There are no upstream (reference condition) or downstream (off-site impacts) sampling stations of the impacted reach. These monitoring data points help determine water quality changes relative to reference conditions and downstream impacts to receiving waterbodies. As such, two additional monitoring locations need to be added to the monitoring program for each reach. The monitoring program for each reach where LACDPW maintenance activities take place should have at least three (3) sampling stations: above project site, at the project site, and below the project site.
- The water quality assessment treats all reaches the same, in terms of waterbody length and width, and overall area impacted. In reality, the geographic area impacted differs, and therefore the amount work, type of machinery, and volume of sediment removed differs from reach to reach. As such, the smaller reaches may be appropriately sampled with a single monitoring event (12 total samples collected). However, one monitoring station may not be sufficient for larger reaches, such as the Compton Creek reach—approximately 2.1 miles long. One sampling station for this reach would be completely inadequate. As such, Heal the Bay recommends that for those reaches greater than half a mile in length, multiple monitoring stations be required—one additional location for every additional half mile. Therefore, a reach such as Compton Creek would require five (5) sampling stations.

The proposed monitoring program in the WDR requires monitoring for dissolved oxygen, pH, turbidity, total suspended solids, and temperature. We recommend that additional constituents be added to this list, such as nutrients, metals, and trash. There are a number of current TMDL requirements in place for the LA River (Bacteria, Metals, Toxicity, and Trash) and Malibu Creek (Sediment, Bacteria, Metals, and Nutrients). In addition, there are many TMDLs yet to be adopted. As such, waste load allocations and load allocations are required for each pollution source that has a reasonable potential to cause or contribute to a water quality standard exceedance. While a discharge of material does not take place immediately after the clearing and dredging, a discharge of sediment (contaminated or not) does take place subsequent to the first large rain event. Maintenance and grading activities have met the reasonable potential standard for these water bodies because sediments often are repositories for fecal bacteria, nutrients and metals. Therefore, the LACDPW maintenance action constitutes a possible source. Yet the WDR fails to detail how WLA and LAs will be met and how monitoring will be sufficient to understand the pollutant contribution. Therefore, Heal the Bay recommends the following constituent monitoring program:

- Basic monitoring:
  - Dissolved Oxygen; pH; turbidity; temperature; Total Suspended Solids (TSS); and Nutrients (Ammonia and Nitrite/Nitrate) through the use of field techniques such as meters.
- Additional monitoring:
  - When turbidity levels exceed the stated thresholds in the WDR, then additional constituents to be monitored will be required.
  - Additional constituents to be monitored will include: Hardness and Metals.

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In addition, Heal the Bay believes that these water quality monitoring requirements should apply to all reaches where LACDPW conducts maintenance, not just the watershed where the feasibility study is implemented during a given year.

No Discussion of Relevant Policies

Similar to Los Angeles County's Department of Public Work's (LACDPW) 401-certification application for the proposed maintenance clearing of engineered earth-bottom flood control channels project, there is little to no discussion of water quality or water resource management policies or strategies of the Regional Water Quality Control Board (RWQCB), State Water Resources Control Board (SWRCB), or Los Angeles County that are relevant to this WDR permit. The only water resource management policy discussed in this WDR is LACDPW's FEMA Levee Certification (pages 4 and 5; points 23 through 28), which deals with the issue of flood control.

Absent from this WDR is any dialogue on water resource/watershed management strategies or policies to deal with flow reductions to these waterbodies requiring 'channel maintenance'. For example, the following should be considered in the context of these WDRs: the RWQCB's Standard Urban Stormwater Mitigation Plan (SUSMP) requirements, the RWQCB's many TMDL Basin Plan Amendments, the County's Low Impact Development Ordinance, the Integrated Regional Water Management Plan (IRWMP), the County's Watershed Management Division 2008 Strategic Plan, and the County's Drought Management Plan. All of these policies or planning documents discuss best management practices and tools for reducing runoff flows to receiving waterbodies. Highlighting strategies and policies that deal with the 'input' component of hydrologic capacity is critical to this WDR because 'Lost hydrologic capacity' is often cited as a reason to remove vegetation, and therefore destroy habitat, from these earthen bottom creeks, streams, or rivers. Yet, there is never a discussion regarding policies or mechanisms, some already in place, to reduce runoff amounts entering these receiving waterbodies. In other words, if these many plans and policies were being implemented appropriately, there would be a reduced need to remove vegetation from these channels and destroy habitat.

In addition, the WDR does not include any discussion of water quality policies and monitoring efforts to ensure that water quality standards are met. As such, it is uncertain how the receiving waterbodies in this WDR, many of which are listed as impaired on the 303(d), will meet water quality standards. Given that the grading work requires the denuding of large amounts of acreage prior to the rainy season, sedimentation through erosion of disturbed soils will occur. The WDR as drafted does not provide assurance that sediments (contaminated or not) do not enter the receiving water and impact downstream resources. This is especially concerning for those reaches with identified impairments or developed TMDLs. There are a number of current and future TMDL requirements in place for the LA River (Bacteria, Metals, Toxicity, and Trash) and Malibu Creek (Sediment, Bacteria, Metals, and Nutrients). As such, waste load allocations and load allocations are required for each pollution source that

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has a reasonable potential to cause or contribute to a water quality standard exceedance. Maintenance and grading activities meet the reasonable potential standard for these water bodies because sediments often are repositories for fecal bacteria, nutrients and metals. Yet the WDR fails to detail how this will happen without required monitoring. Maintenance activities need to be part of TMDL implementation and compliance assurance programs. What is the Regional Board doing to ensure that maintenance impacts are covered under pertinent water quality policies?

Further there is no discourse within the WDR on protecting the ecological role these waterbodies provide or maintaining Basin Plan designated beneficial uses. Every reach included in this WDR has some type of biological beneficial uses such as Warm, Wild, Wet, Rare, or Cold. There are a number of projects that have taken a different, integrated approach to dealing with water resource management, water quality, and habitat protection, such as the Tujunga Wash Restoration, the Dominguez Gap Wetlands, and Sun Valley Watershed—of note, these are all LACDPW projects. Ecosystem restoration and habitat protection are main features in the County's Watershed Management Division's 2008 Strategic Plan. Yet, the WDR fails to score the relevancy of these projects to the proposed channel maintenance.

In sum, the RWQCB needs to take an integrated watershed management approach, where water resource management, water quality requirements, and ecological protection, are all taken into consideration for regulatory actions. Ultimately, this means that the RWQCB needs to integrate Clean Water Act Policies, such as 303, 305, 319, 401, 402, and 404, into an overarching program that enables Basin Plan water quality standards to be met in each of the watersheds. Does the RWQCB have any goals or objectives for:

- Reducing the frequency of disturbance in earthen-bottom creeks, streams or rivers?
- Reducing the number of reaches needing "maintenance"?
- Reducing the hydromodification impacts (downstream scour, sedimentation, and erosion) of increasing peak flow velocities through channelization and maintenance?
- Reducing the continued loss of earthen-bottom creeks, streams, or rivers to complete channelization?
- Promoting restorative best management practices with native plants to reduce sediment and or contaminant loading after "maintenance"?

Given the geographic scope of the current 401-certification, and the proposed WDR, it is critical that the RWQCB take an integrated approach. Unfortunately, as written, this WDR continues the piece-meal, singular approach to watershed management, and fails to protect receiving water biological and water quality beneficial uses.

Updating Outdated Reference Material

Once again, this proposed WDR cities many outdated studies, permits, and environmental documents that are 10 to 15 years old. Public policies, regulatory requirements, site conditions, and environmental concerns have changed drastically over this time period. Once more, the application uses studies that assume flow rates to indefinitely increase over time.

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For example, the 1999 Mitigated Negative Declaration that is cited in the WDR must be renewed as a number of site conditions have changed with this certification application. Also how can the 1996 "Effects of Vegetation on the Capacity of Soft-Bottom Flood Control Channels" and 1993 "Design Memorandum for Compton Creek Improvements" be cited for why vegetation must be removed for earthen bottom areas, when both of these documents clearly do not take into account current policies targeting stormwater capture, infiltration and reuse. How is the California Department of Fish Game's Streambed Alteration Agreement from 1999 still valid? The WDR clearly states that the "agencies involved intended to develop a more comprehensive plan in subsequent years…the goal was to develop a plan that would allow for vegetation/habitat to remain, to the maximum extent feasible, within these earthen-bottom channels." Has there been any movement over the last 10 years by the LACDPW to update the Streambed Alteration Agreement to the RWQCB's intent?

The 1999 Maintenance Plan developed by the County, ACOE, CDFG, and RWQCB does not provide sufficient data to critically evaluate the County's actions or impacts on the natural resources. In reviewing past Maintenance Plan reporting forms, the information collected is either incomplete or insufficient to provide any usefulness. There is a 2004 report that states a specific comment about water quality as "good." What does "good" mean in terms of compliance with water quality objectives when there is no water quality data? There are countless reports with missing trash information. For instance the question of how much trash was present when the project was initiated or trash removed when the project was completed, is unanswered Then there is the *Biological Resources Monitoring Form*, which fails to provide any relevant data on habitat conditions prior and post grading/maintenance activities, or any discussion of impacted fauna species (vertebrate or invertebrate). In addition, the over-simplification of the flora species with comments like "ruderal vegetation" exist, and is "typified by castor bean", is not even a rudimentary inventory of floral species present.

It is impossible to determine whether the Maintenance Plan is outdated based on what information is required or whether the County is incorrectly completing the forms. Either way, the lack of information and data creates a great deal of uncertainty about the true impacts of 'channel maintenance' to ecological resources, and compliance with the Basin Plan. At some point, the RWQCB must require the County to develop new plans and obtain updated permits before approving any future 401certification or WDR.

No Information on Past Compliance

In reviewing this WDR, there was no information contained in the permit regarding the County of Los Angeles' compliance with related permits or certification conditions related to this project. As stated in this WDR, the County was required to complete an "assessment of the biological functions and values for each reach." (page 3, point 15). The WDR goes on to state that the information was never submitted. In the 1999 and 2003 401-certifications issued to the LACDPW, there were a number of conditions that required monitoring and or baseline assessments to be conducted (2003 Conditions 5, 6, 9, 14, 15, 16, 17, and 21) prior to and after any work. Yet, there is no water quality, toxicity, sediment, or ecological monitoring

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data provided in the current application associated with past activities. Without this critical baseline monitoring and reporting information, how can the RWQCB issue permits for this discharge that are protective of receiving waters and beneficial uses? Further, how can the public determine if these natural resources are being protected or impacted if no monitoring data is collected or proper assessment completed? The lack of any objective scientific data makes it impossible to make this determination. With all of the County's channel maintenance activities, how is the RWQCB protecting existing stream and river beneficial uses, ensuring progress towards TMDL compliance, or ensuring other Basin Plan objectives are met if no water quality or biological monitoring is collected.

Specific Comments on Additional Conditions

Permitted Activities

Condition #34: This condition details the rational used to identify baseline levels for maximum vegetation removal for each reach. Yet there is no discussion regarding how frequently the LACDPW uses the maximum level of vegetation removal for each reach. In addition, there is no discussion of updating the 1999 Streambed Alteration Agreement, which would more than likely reduce the maximum volume amount of vegetation LACDPW could remove.

Condition #35: Before issuing this WDR, the RWQCB staff must review and evaluate existing reports required by the Mitigation Monitoring Program or the Maintenance Plan to determine if the information being collected by the LACDPW fulfils monitoring goals. The required reports currently provide little data to evaluate LACDPW's project. As such, it is impossible to determine any modifications that are needed to improve the project implementation, ecological resources protection, or Basin Plan compliance.

Condition #38: In riparian habitat, such as earthen bottom rivers, streams, or creeks, ponded water is not necessarily a 'bad element' as Condition #38 implies. Ponds frequently provide much needed habitat benefits for macroinvertebrates, amphibians, fish, and birds, particularly in the summer and fall. Also, what is the nexus between 'ponded water' and 'allowing storm flows to flow freely during future storms'?

Work Plan Notification Protocol

Condition #40: For the sake of public transparency, interested stakeholders should be included as a group to receive LACDPW's Annual Work Plan and 'notices of additional routine maintenance work'. In addition, the onus should be on the discharger for disseminating the information to interested stakeholders in timely manner.

Also, thresholds for additional review need to be expanded to include: changes in regional or statewide policies (e.g. the development of Index of Biological Integrity (IBI) criteria or Bioassessment in Water Quality Regulation), or changes in on-site conditions (e.g. ecological

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assessments determine the presences of sensitive species or habitat, or significant water quality impairments from the project).

Best Management Practices (BMPs)

Condition #41: Best Management Practices should be implemented to "eliminate" impacts to water quality and beneficial uses, not minimize them. Also, the RWQCB should require the use of re-vegetation of impacted areas as a possible BMP to reduce the amount of sediment leaving the site after maintenance is completed. In addition, determining BMP efficacy needs to be part of LACDPW monitoring plan, if the RWQCB is to achieve the objective of "not result in changes in the quantity or quality of storm water of downstream waterbodies…"

Feasibility Study

Condition #42: Arguably this exercise should have already been completed through the implementation of previous 401-certifications (1999, 2003, 2008 extension). In addition, the RWQCB requested similar data in a letter to LACDPW dated August 29, 2008 (see page 3, point 15). That RWQCB request was never completed by LACDPW. At a minimum, a full watershed assessment should occur for each reach at least once per five year WDR cycle, and a summary of biological impacts at each reach should occur on an annual basis.

Condition #43: What criteria are to be used to determine 'potential'? If no criteria are developed or recommended prior to the commencement of these feasibility studies, then the County could theoretically determine that all reaches must be free of vegetation. The RWQCB should develop the criteria and included it in the WDR permit. The criteria need to be developed in consultation with interested watershed stakeholders.

In addition, once a segment of creek, river, or stream are determined to meet the threshold for allowing vegetation to remain, then defining the 'potential' restoration opportunities for riparian habitat and vegetation growth need to be determined. This element needs to be conducted with interested watershed stakeholders input.

Condition #44: For the sake of public transparency, interested stakeholders should be involved in the determination of which watersheds shall be selected for future feasibility studies.

Condition #46: Any plan developed by the LACDPW should be made available to interested watershed stakeholder for review and comment prior to being approved by the Executive Director.

As part of the hydrological analysis, the RWQCB must require the LACDPW to include an assessment of watershed where increased stormwater capture and infiltration opportunities exist to reduce flow volumes to impacted reaches.

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In addition, Heal the Bay recommends that Index of Biological Integrity (IBI) scores be determined for all impacted soft-bottomed reaches. Also, all biological functions and values need to consider both existing and potential ecological resources. In assessing those biological functions and values, what entity will validate the outcome? Heal the Bay recommends that a third-party collective develop the criteria to be used in reviewing identified biological functions and values.

Condition #48: Targeted numeric goals and overarching watershed objectives should be included as part of the Technical Assessment Report (TAR). Beyond assessing water quality conditions in impacted reaches, the TAR should state RWQCB short and long term objectives for these reaches, such as:

- How to reduce the frequency of disturbance in earthen-bottom creeks, streams or rivers?
- How to reduce the number of reaches needing annual "maintenance"?
- How to reduce the hydromodification impacts (downstream scour, sedimentation, and erosion) of increasing peak flow velocities through channelization and maintenance?
- How to reduce the loss of earthen-bottom creeks, streams, or rivers to complete channelization?
- How to restore, enhance, and sustain the ecological resources?

To reiterate comments made for Condition #43, prior to commencing with the Feasibility Study, the RWQCB should first develop the criteria to be used to determine 'potential'? If no criteria are developed or recommended prior to the commencement of these feasibility studies, then the County could theoretically determine that all reaches must be free of vegetation. The criteria need to be developed in consultation with interested watershed stakeholders.

In addition, once a segment of creek, river, or stream are determined to meet the threshold for allowing vegetation to remain, then defining the 'potential' restoration opportunities for riparian habitat and vegetation growth need to be determined. This element needs to be conducted with interested watershed stakeholders input.

Finally, the RWQCB needs to provide interested stakeholders an opportunity in the review and comment of the TAR.

Condition #49: As currently written in the WDR, it is unclear who will make or provide the recommendations. Is it the LACDPW, the RWQCB staff, or a watershed stakeholder collective? Heal the Bay recommends that the County, the RWQCB, and interested public agencies and watershed stakeholders all participate in the development of recommendations to the Executive Director.

In addition, the RWQCB should require the inclusion of long-term strategies to preserve earthen bottom habitats, enhance existing ecological resources, and over-time increase the number of reaches where vegetation is allowed to remain or be restored, even if they don't

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currently exist. The development of reports or studies that offer no recommendations for long-term strategies will be completely inadequate as an end outcome to this process.

Provisions

Condition #9: The RWQCB must require that all biological surveys contain complete information and photo documentation. Historically, the reporting on ecological resources within impacted reaches has been incomplete and inadequate. For example, most of the past reports have failed to provide any relevant data on habitat conditions prior and post grading/maintenance activities, or any discussion of impacted fauna species (vertebrate or invertebrate). In addition, the over simplification of the flora species with comments like "ruderal vegetation" exist, and is "typified by castor bean", is not an adequate inventory of floral species present in a number of these reaches.

Thank you for the opportunity to comment, and if you have any questions please feel free to contact us at (310) 451-1500.

James Alamillo

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